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Tuesday, December 21, 1999

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
In re

JEAN A. GUNNARSON,

No. 98-11658

[Debtor](#) <sup>i</sup>(s).

### **Memorandum re Sanctions**

The debtor's [Chapter 13](#) <sup>i</sup>[plan](#) <sup>i</sup> was confirmed on July 20, 1998. It provides for a 100% dividend to creditors, paid over 36 months. Craig Cryer is the debtor's former spouse. On November 4, 1999, Cryer filed a motion to "modify and/or terminate the Chapter 13 plan after [confirmation](#) <sup>i</sup>." The court has denied the motion. The issue now before the court is whether it should honor the debtor's request for sanctions contained in her response to the motion. The motion was patently meritless insofar as it sought "termination" of the plan. Section 1330(a) of the [Bankruptcy Code](#) <sup>i</sup> provides the only means for undoing a confirmed plan. It may be invoked only for 180 days after confirmation, and only by [adversary proceeding](#) <sup>i</sup>. FRBP 7001(5). Creditors do have a right to seek modification of a plan under § 1329(a). However, that section is intended to allow upward or downward adjustment of plan payments in response to changes in the debtor's circumstances that substantially affect the ability to make future payments. In § 1329(a) motions, "parties may not raise

issues as to aspects of the plan that have not changed, or issues that could have been raised at the confirmation hearing. The confirmed plan is *res judicata* as to all such issues." 8 Collier on Bankruptcy (15<sup>th</sup> Ed. Rev.), ¶ 1329.02, p. 1329-5. Considering the lack of merit to the motion, the court would have considered the debtor's request for sanctions if it had been properly presented. However, FRBP 9011(c)(1) forbids the consideration of motions for sanctions not separately presented, and requires a 21-day notice and opportunity for the offending party to withdraw its motion. Since the request for sanctions was not properly presented, it will be denied with prejudice. The court notes that both the debtor's counsel and Cryer's counsel are from Southern California, which may have a different legal culture from that prevailing in this part of the state. This court is not used to incivility and meritless motions. It sees requests for sanctions very rarely, and does not treat such requests lightly. The court strongly suggests that both sides carefully consider any further motions and tactics. The court is slow to find sanctionable conduct, but repeated treatment of bankruptcy proceedings as a family feud is likely to arouse the ire of the court. The court strongly suggests that this Chapter 13 case proceed to conclusion and [discharge](#) without further litigation. Any further motions had better be well-founded in the law.

Dated: December 21, 1999

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Alan Jaroslovsky

United States [Bankruptcy Judge](#)

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